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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,136	10/17/2003	John David Mann	27425-0001	2015

7590 11/16/2006

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CANADA

EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/688,136	Applicant(s) MANN, JOHN	
	Examiner Eugene Lhymn	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6 & 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is unclear whether the truss is a peripheral item on the body, or if the truss is simply the body. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schenkman (US 4593818). With respect to claim 1, Schenkman discloses the following:

- A body
- A first flange, engaging lower rim of upper can (upper side of item 16)
- A second flange, opposite of first flange, engaging upper rim of lower can (lower side of item 16)

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- A third flange extending radially outward from body, perpendicular to first and second flanges (Fig. 3, the substantially flat portion extending from item 16)

With respect to claims 2 & 11, Schenkman discloses at least one of the flanges having a perimeter similar to the cans.

With respect to claims 3 & 12, Schenkman discloses the flanges having circular perimeters.

With respect to claims 4 & 13, Schenkman discloses at least one of the flanges being discontinuous, as shown in Fig. 2.

With respect to claims 5 & 14, Schenkman discloses an aperture.

With respect to claims 6 & 15, to the degree that the claim is understood, Schenkman discloses the body including a truss, wherein the thickened area 16 adds strength to the container, therefore acting as a truss member.

With respect to claim 9, although Schenkman does not explicitly disclose the claimed method, said method is inherent in the invention of Schenkman, wherein said method comprises the following steps:

- Squaring the edge of the upper rim of the lower can and the lower rim of the upper can
- Retaining the upper can in position by releasably engaging a portion of the inside face of the lower rim of the upper can, wherein the upper can is engaged with the coupler, similar to the configuration of Fig. 3.

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- Retaining the lower can in position by releasably engaging a portion of the inside face of the upper rim of the lower can, wherein the lower can is engaged with the coupler, as shown in Fig. 3

With respect to claim 10, Schenkman discloses the following:

- A body
- A first flange, engaging lower rim of upper can (upper side of item 16)
- A second flange, opposite of first flange, engaging upper rim of lower can (lower side of item 16)
- A third flange extending radially from body, perpendicular to first and second flanges (Fig. 3, the substantially flat portion extending from item 16)
- An upper and lower can, each with an upper and lower rim (Fig. 3)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

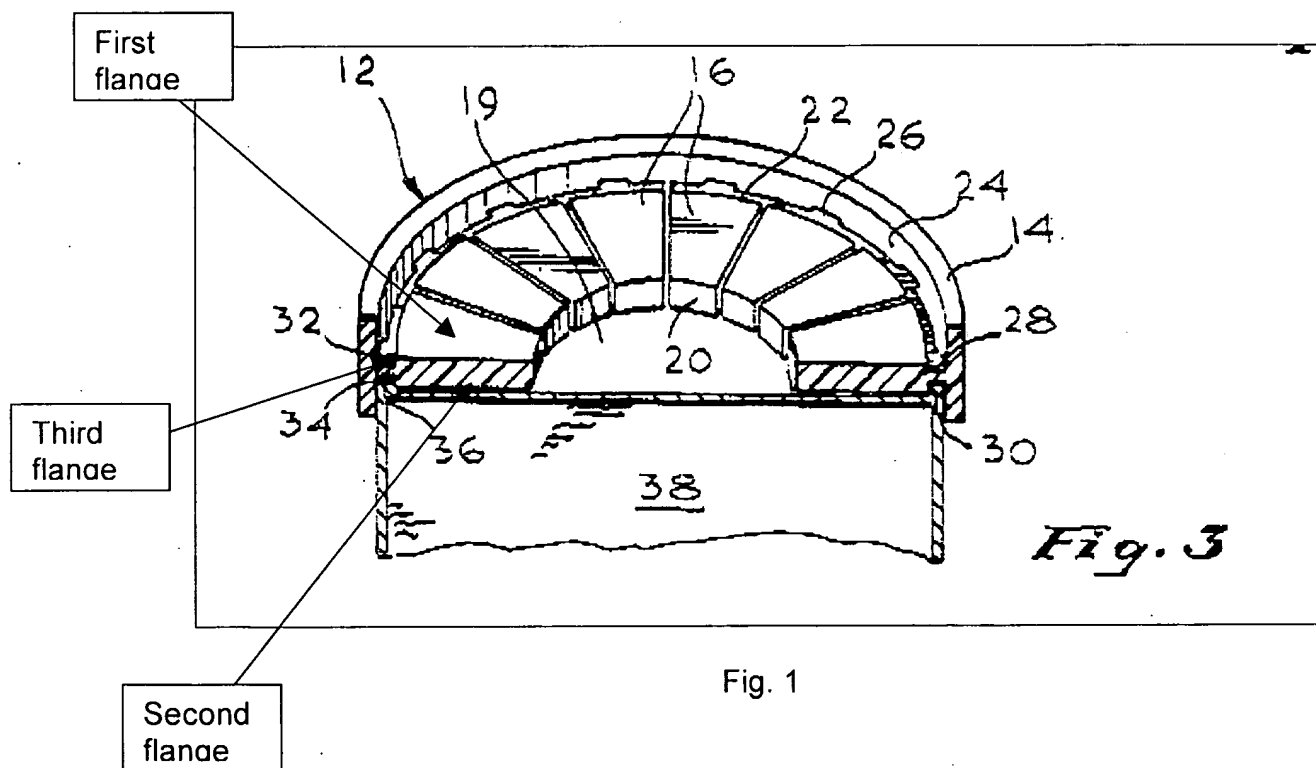
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-8, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schenkman in view of Paul (US 3661097). With respect to the claims, Schenkman discloses the claimed invention except for the body including a grip, the grip being a notch on the periphery of the body. Nonetheless, Paul teaches a can stacker having

notches on the body periphery, thus serving as grips (Fig. 4). Having grips as such reduces weight and provides an ergonomic gripping structure. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the stacker body of Schenkman to have notch grips as taught by Paul so as to reduce weight and provides an ergonomic gripping structure.

Response to Arguments

7. Applicant's arguments filed 8/23/06 have been fully considered but they are not persuasive. With respect to claim 1, the upper and lower flanges DO NOT circumscribe the third flange. The upper and lower portions of 16 are radially inward from the third flange which extends perpendicularly beyond therefrom. See Fig. 1 below.



Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EL


ANTHONY D. STASHICK
PRIMARY EXAMINER